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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/768,744

02/02/2004

Christopher Hunter

120-000220US

4909

22798

7590

05/13/2009

QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.

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ALAMEDA, CA 94501

EXAMINER

WOODWARD, CHERIE MICHELLE

ART UNIT

PAPER NUMBER

1647

MAIL DATE

DELIVERY MODE

05/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/768,744</p>	<p>Applicant(s) HUNTER ET AL.</p>	
	<p>Examiner CHERIE M. WOODWARD</p>	<p>Art Unit 1647</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 23 April 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,6,11-13,18-21,24-26 and 79.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Cherie M. Woodward/
Primary Examiner, Art Unit 1647

Continuation of 3. NOTE: The amendments to claims 21 and 73 overcome the claim objections, but do not overcome the rejections under 35 USC 102(a),(b), or (e) or the ODP rejection, all of which are maintained. Applicant argues that the claim of benefit is proper. Applicant's argument is not persuasive for the reasons of record, set forth in detail in the Office Action mailed 11/21/2008. In response to the multiple rejections under 35 USC 102(a), (b), and (e), Applicant argues that the cited references do not teach the steps of administration of an IL-27R agonist to a person in need of immunosuppression. Applicant disagrees with the examiner's use of extrinsic evidence used by the examiner in response to Applicant's arguments. Applicant argues that extrinsic evidence should not include references to post-filing date art. Applicant states that they will submit a terminal disclaimer over the claims of the '121 application when all substantive issues have been resolved and the claims are otherwise in condition for allowance.

Applicant's arguments have been fully considered, but they are not persuasive. Applicant's arguments are repetitious of the arguments submitted in the response filed 8/11/2008 and responded to by the examiner in the Office Action mailed 11/21/2008. Contrary to Applicant's assertions, MPEP 2124 permits an examiner, in certain circumstances, to use cited references to show that a universal fact need not be available as prior art before applicant's filing date. Such facts include the characteristics and properties of a material or a scientific truism, or that characteristics of prior art products were known, *In re Wilson*, 311 F.2d 266, 135 USPQ 442 (CCPA 1962). Applicant's arguments to not overcome the rejections of record for the reasons set forth, in detail, of record. Applicant's statements regarding the provisional ODP rejection are noted and the rejection is maintained. For the purposes of appeal, Applicant's amendments are entered.